

REMARKS

Restriction Requirement

On page 2 of the Office Action, the Examiner issued a two way restriction requirement pursuant to 35 USC § 121 and 372. (Paper No. 20080306 at 2.) The restriction divided the claims into the following allegedly distinct inventions:

- Group I claims 1-8, drawn to a recombinant microorganism of the genus *Sinorhizobium* which is transformed with a vector containing pyridoxol 5'-phosphate synthase gene and D-erythrose 4-phosphate dehydrogenase gene, and being capable of producing vitamin B₆. (*Id.*)
- Group II claims 9-16, drawn to a process for preparing vitamin B₆ by cultivating a recombinant microorganism of the genus *Sinorhizobium* which is transformed with a vector containing pyridoxol 5'-phosphate synthase gene and D-erythrose 4-phosphate dehydrogenase gene, and being capable of producing vitamin B₆ which comprises cultivating the recombinant microorganism under aerobic conditions at a pH value of about 5.0 to 9.0, at a temperature of 10°C to 40°C, and for 1 day to 15 days in a medium containing an assimilable carbon source, a digestible nitrogen source, inorganic salts, and other nutrients necessary for the growth of the microorganism, and then recovering vitamin B₆ formed and accumulated in the culture broth. (*Id.*)

In accordance with restriction practice, the subject matter of Group II, claims 9-16, is hereby elected for prosecution, with traverse.

Requirement for Election of Species

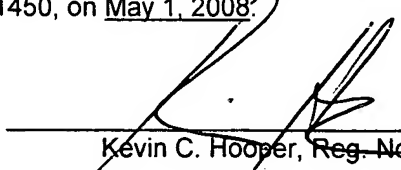
The Examiner also required that applicant elect a specific organism as well as a specific gene (*Id.*). In accordance with election of species practice, the *Sinorhizobium*-specific strain and the pyridoxol 5'-phosphate synthase gene are hereby elected. The elected species are believed to be encompassed by claims 9-13 and 16.

We respectfully request reconsideration of the species election requirement with respect to the specific gene. In this regard, we note that claim 9 is

directed to a process for preparing vitamin B₆ using a recombinant microorganism engineered to contain a vector that encodes two specific genes. The presence of both genes is disclosed to "improve the production efficiency of vitamin B₆ drastically ..." (paragraph 8, line 2). Thus, to require election between the two components of the recited vector would require applicant to rewrite the claim in a fundamental way, which is not permitted. See, e.g., 35 U.S.C. §§ 112 and 132 and MPEP 706.03(o). Thus, the species election is improper and should be withdrawn. Accordingly, we request that prosecution on the merits begin with respect to Group II (drawn to claims 9-16), wherein the elected microorganism is a *Sinorhizobium* – specific strain. Claims 9-16 are believed to encompass this election.

If the Examiner has any questions regarding this paper, please contact the undersigned.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on May 1, 2008.


Kevin C. Hooper, Reg. No. 40,402

Respectfully submitted,

By: 

Kevin C. Hooper
Registration No. 40,402
BRYAN CAVE LLP
1290 Avenue of the Americas
New York, NY 10104-3300
Phone: (212) 541-2000
Fax: (212) 541-4630